



April 19, 1999

Ms. Marie E. Galindo  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR99-1039

Dear Ms. Galindo:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123554.

The City of Midland (the "city") received a request for "information or incident reports" concerning a specified individual. You state that "[t]wo incident reports were responsive to the request, and one (1) was forwarded to the requestor." You ask whether the submitted report is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the "informer's privilege." We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Public Information Act, Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983).

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

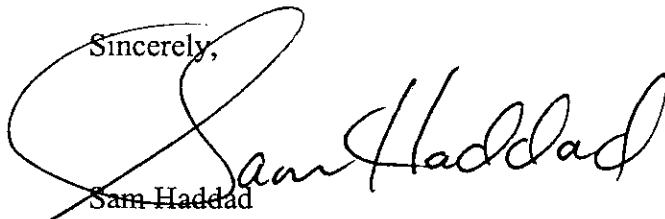
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978); *see also* 508 Tex. R. Civ. Evid.

In this instance, you state that "the person who reported the assault as witness, victim and informer acted, at minimum, as an individual who has cooperated in law enforcement activities."<sup>1</sup> Based on your representations and a review of the information, it is evident that the complainant's identity is known to the suspects; therefore, we conclude that the informer's privilege is not applicable in this instance.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Sam Haddad". The signature is written over the printed name "Sam Haddad".

Sam Haddad  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note that you have not raised any other applicable exceptions to disclosure for the submitted information. Therefore, we cannot address whether the information at issue, or a portion thereof, could be withheld by another exception under the act.

<sup>2</sup>We assume that any other responsive information, to the extent it exists, will be provided to the requestor, since you have not raised any other exceptions to disclosure.

SH/nc

Ref.: ID# 123554

Encl: Submitted documents

cc: Mr. R. David Lewis  
Attorney at Law  
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(w/o enclosures)

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